IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

JUDGMENT
IN
S.B. CIVIL FIRST APPEAL NO.32/1999

M/s. Ganesh International Travels Pvt. Ltd.
AND Ramavtar Gupta S/o Banarsidass Gupta
AND Smt. Shashi Gupta W/o Ramavtar Gupta
...defendant-appellants
Versus
United Commercial Bank, Johari Bazar, Jaipur
...plaintiff-respondent

Date of Judgment ::: 3rd July, 2007

PRESENT
HON'BLE MR. JUSTICE NARENDRA KUMAR JAIN

Shri Rinesh Gupta, Advocate, for
Shri Arvind Kumar Gupta, Counsel for defendant-appellants
Shri K.S. Sharma, Counsel for plaintiff-respondent
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By the Court:-

The Additional District Judge No.4, Jaipur City, Jaipur, vide its impugned judgment and decree dated 8th September, 1998 decreed the suit of the plaintiff-respondent for recovery of sum of Rs.1,85,390/-, against the defendant No.1 M/s. Ganesh International Travels Private Limited, with interest. Being aggrieved with the same, the defendants have preferred this appeal.

Briefly stated the facts of the case are that the plaintiff-respondent filed a suit for recovery of a sum of Rs.1,85,390/- in the trial court, wherein it was

pleaded that there is one current account of defendant No.1 in the plaintiff-Bank wherein the defendants used to avail the facility of temporary overdraft from time to time. The defendant No.2 took a loan of Rs.1,50,000/- for purchasing computer and placed a fixed deposit of Rs.25,000/- towards collateral security. It was pleaded that a sum of Rs.1,85,390/- has become due in the said account against the defendant till 30th November, 1994 but the defendants have not deposited the aforesaid due amount in spite of number of reminders. The defendants filed their written statement wherein they denied the contents of the plaint and prayed that the suit of the plaintiff be dismissed.

The trial court, on the basis of pleadings of the parties, framed five issues which are reproduced in Para 4 of the impugned judgment.

Both the parties led oral and documentary evidence. The trial court, vide its impugned judgment, decreed the suit of the plaintiff, as mentioned above.

The only contention raised in the present appeal by Shri Rinesh Gupta, the learned counsel for the appellants, is that the defendant-appellants did not give any application in writing for sanction of temporary overdraft facility with the plaintiff-bank and

appellants did not avail the overdraft facility from the plaintiff- bank therefore the trial court has committed an illegality in passing the impugned decree against the defendant-appellants and the same is liable to be set aside by this court.

The learned counsel for the plaintiff-respondent contended that on the request of the defendants the facility of temporary overdraft was sanctioned and the defendants availed the said facility. He referred Exhibit-8 to Exhibit-21 – the Cheques and withdrawal vouchers issued by the defendants from time to time withdrawing the amount against temporary overdraft facility granted/sanctioned to the defendants. He also referred the other documentary evidence to show that overdraft facility was availed by the defendants, therefore, he contended that the learned trial court has rightly decreed the suit of the plaintiff and no interference is called for by this court in this appeal.

I have considered the submissions of the learned counsel for the parties and minutely scanned the impugned judgment as well as the record of the trial court.

Exhibit-2 is letter dated 28th September, 1989 written by the defendant No.1 to the plaintiff-bank to

debit their current account every month by Rs.5,000/- for 35 months in consideration of granting advance to Ramavtar Gupta, the defendant No.2, the Managing Director of the defendant No.1 firm, for buying computer system. A fixed deposit of Rs.25,000/- was also handed over to Bank for collateral security by defendants. Exhibit P-6 is the copy of account of defendant No.1 maintained by the plaintiff-bank which shows that a sum of Rs.1,85,390/- became due against the defendant upto 30th November, 1994. Exhibit-7, the Cheque dated 29.2.1992 was issued by defendant No.1 against the said account. Exhibit P-10 is the debit voucher dated 6.3.1992. Exhibit P-11 the Cheque dated 6.3.1992, Exhibit P-14 the Cheque dated 19.2.1992, Exhibit P-15 the Cheque dated 14.3.1992, relate to the said account, issued by the defendant No.1; and Exhibit P-8, Exhibit P-9, Exhibit P-12, Exhibit P-13, Exhibit P-16 and Exhibit P-18 are credit vouchers in respect of the said account. Exhibit P-20 and Exhibit P-21 are also the credit vouchers. These documentary evidence clearly show that overdraft facility was sanctioned in favour of the defendant and the same was availed by the defendant.

I have also examined the statement of PW-1 Shri Liladhar, PW-2 Amar Singh, DW-1 Ramavtar Gupta and DW-2

Jay Dayal Mahandiratta, and from their close scrutiny it is clear that a temporary overdraft facility was sanctioned/granted to defendant No.1 and the same was availed and from the statement of account Exhibit P-6 it is clear that a sum of Rs.1,85,390/- was due against the defendants which was not paid. In these circumstances, I find that the learned trial court has rightly recorded a finding that overdraft facility was sanctioned by plaintiff-Bank and the same was availed by the defendants and a sum of Rs.1,85,390/- was due against them and, therefore, the trial court rightly passed the impugned decree in favour of the plaintiff-bank.

In view of the above discussion and reasons, I do not find any merit in the sole contention of the learned counsel for the appellant. No other point has been pressed before me by the learned counsel for the appellant in this appeal during the course of arguments.

In the result, there is no merit in this appeal and the same is accordingly dismissed with no order as to costs.

(Narendra Kumar Jain) J.

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